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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961

No. [redacted] 137

GENERAL MOTORS CORPORATION,
Petitioner,

vs.

UNITED STATES OF AMERICA, and
INTERSTATE COMMERCE COMMISSION,

and

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RAILROAD RESPONDENTS IN OPPOSITION

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Opinions Below

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division, is reported in *General Motors Corporation* v. *United States*, 193 F. Supp. 198.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported in *General Motors Corporation* v. *United States*, 299 F. 2d 233.

Statement of the Case

This litigation concerns the lawfulness of freight charges assessed by these respondents on numerous mixed carload shipments of household appliances shipped by the petitioner in interstate commerce.

The lawfulness of the assailed freight charges was initially challenged in a complaint proceeding before the Interstate Commerce Commission. The validity of the Commission orders issued in that proceeding were thereupon made the subject of a complaint in the District Court. When the District Court rendered a decision adverse to the petitioner its decision was appealed to the Court of Appeals. The petitioner now seeks to have the matter reviewed by this Court.

A. The Proceeding Before The Interstate Commerce Commission.

By complaint filed with the Interstate Commerce Commission on March 7, 1955, the freight charges assessed by the respondents were alleged to have been unlawful and in violation of the Interstate Commerce Act (49 U.S.C.).

In a *Report of the Commission*, by Division 2, decided June 26, 1957, 301 I.C.C. 59, the assailed rates and charges were found inapplicable, the applicable rates were determined, and reparation was awarded.

Thereafter, the Commission reopened the proceeding upon a petition of these respondents, and in the *Report of the Commission on Reconsideration*, decided April 20, 1959, 306 I.C.C. 345, the assailed rates and charges were found applicable in some instances and inapplicable in others. In the latter case the applicable rates were determined, reparation was awarded, and the prior findings

of the Commission, by Division 2, were modified accordingly.

On or about June 2, 1959, the complainant filed a petition seeking the reopening, reconsideration and modification of the *Report of the Commission on Reconsideration*, to which the defendants replied on or about July 17, 1959. By order dated November 9, 1959, the Commission denied that petition "for the reason that the matters submitted in support thereof do not constitute substantial and material grounds to warrant reopening of this proceeding for reconsideration".

B. The Proceeding Before The District Court.

By complaint filed in the United States District Court for the Eastern District of Michigan, Southern Division, on June 9, 1959, the petitioner sought to set aside the Commission orders, alleging that the "decision and requirement" of the Commission in the proceeding before it and the resulting orders issued therein were "predicated upon an erroneous reading of the railroad tariffs and in consequence thereof is arbitrary, capricious, and without support of law or evidence, * * * contrary to the mandate of the Interstate Commerce Act requiring the railroads to assess for transportation only the exact published tariff rate and charge (49 U.S.C. § 6(7))". The prayer of the complaint was that the decision and requirement of the Commission dated April 20, 1959, and the order of the Commission dated November 9, 1959, each be set aside and declared null and void.

The District Court held that since the matter presented only an issue of reparations, the Court could not review the orders of the Commission. Nevertheless, it proceeded to deal with the merits of the case and found that there was a rational basis for the conclusions of the Commission. It accordingly denied the relief prayed for and dismissed the complaint.

C. The Proceeding Before The Court Of Appeals.

The petitioner appealed the denial of the relief prayed for and the dismissal of its complaint by the District Court to the Court of Appeals. That Court held that the District Court erred in holding that it had no jurisdiction.*

In dealing with the merits of the case, the Court of Appeals stated its function was limited to determining whether the order of the Commission was supported by substantial evidence and correctly applied the law (citing *Great Lakes Steel Corp.* v. *United States*, 220 F. 2d 751, cert. denied 350 U. S. 821). It reviewed the proceeding before the Commission, and noted the defendants' objective in publishing their tariff provisions. The Court stated that the Commission, in upholding the contentions of these respondents with respect to the provisions of their published tariffs, construed those provisions in the light of their history and what they were intended to accomplish. The Court concluded that the decision of the Commission was supported by substantial evidence and correctly applied the rules of law. It also concluded that there was certainly a rational basis for the conclusion which it reached, as the District Court had also done, citing *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282.

The Court of Appeals accordingly affirmed the judgment of the District Court upholding the order of the Commission and dismissing the complaint.

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* In the District Court the Interstate Commerce Commission contended that the Court had no jurisdiction to review its order denying reparation. However, in the Court of Appeals the Commission conceded that the District Court had jurisdiction to review its order denying reparation. Since all parties are in agreement on that point, it is no longer an issue.

Argument

The petitioner seeks a writ of certiorari on the purported ground that the Interstate Commerce Commission approved the application of an unlawful rate by an interpretation not in accord with the plain provisions of a published tariff, and that approval, being in error as a matter of law, should not have been sustained by the courts below. But what the petitioner is actually seeking is to have this Court substitute its judgment for the informed judgment and experience of the entire Commission, something which this Court has repeatedly said is beyond the judicial function.

The gist of the petitioner's argument is that the Commission made an erroneous interpretation of certain of the respondents' tariff provisions, the result of which was to find a basis of rates and charges legally applicable on the petitioner's shipments which the petitioner had complained of as being excessive.

Under the provisions of Section 9 of the Interstate Commerce Act, 49 U.S.C. § 9, the petitioner had a right to file a complaint with the Interstate Commerce Commission or to file suit in any district court of the United States of competent jurisdiction, to determine whether the freight charges assessed by these respondents or those contended for by the petitioner were legally applicable on the involved shipments. Having elected to file a complaint with the Interstate Commerce Commission, the petitioner became bound by that election, subject only to a right to judicial review of the proceeding before the Commission and of any order issued as a result thereof.

The nature and scope of that review has heretofore been made clear by this Court.

In *Int. Com. Comm.* v. *Union Pacific R.R.*, 222 U. S. 541, this Court said:

> "There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus

far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Int. Com. Comm.* v. *Ill. Cent.*, 215 U. S. 452, 470; *Southern Pacific* v. *Int. Com. Comm.*, 219 U. S. 433; *Int. Com. Comm.* v. *Northern Pacific*, 216 U. S. 538; 544; *Int. Com. Comm.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 174.

"In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Ill. Cent.* v. *I.C.C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." (pp. 547-548)

In *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, this Court indicated (p. 481) that the judgment and discretion of the Commission and its decisions, made the basis of administrative orders* are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power, citing *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 170. The Court then added:

> "The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done. *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361." (p. 482)

In *Miss. Valley Barge Co.* v. *U. S.*, *supra*, this Court said:

> "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form. Florida v. United States, ante, p. 1. It is not the province of a court to absorb this function to itself. *I.C.C.* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 100; *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, 271;

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* Referring in that particular instance to orders operating *in futuro*.

Virginian Ry. Co. v. *United States*, 272 U. S. 658, 663. The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body". (pp. 286-287).

A. The Findings Of The Commission Are Conclusive.

In support of its contention that the Commission erroneously interpreted and applied the respondents' published tariff provisions, and thus made the disposition of the complaint before it "arbitrary, capricious, and without support of law or evidence", the petitioner introduced as evidence in the District Court proceeding only a portion of the evidence introduced in the proceeding before the Commission.

This Court has heretofore stated that an order of the Commission may not be assailed on the ground that it was unsupported by evidence, or not supported by sufficient evidence, when the whole of the evidence before the Commission is not produced. *Spiller* v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117, 125; *Louisiana & P. B. Ry. Co.* v. *United States*, 257 U. S. 114, 116; *Edward Hines Trustees* v. *U. S.*, 263 U. S. 143, 184. That defect alone, these respondents respectfully submit, is sufficient to justify a refusal by this Court to grant the writ prayed for. In any event, where in instances of this kind a party fails to introduce in evidence in the District Court proceeding the whole of the evidence introduced in the proceeding before the Commission, the settled rule laid down by this Court is that the findings of the Commission are necessarily conclusive. *Nashville Ry.* v. *Tennessee*, 262 U. S. 318, 324; *Chicago, I. & L. Ry.* v. *U. S.*, 270 U. S. 287, 295; *Miss. Valley Barge Co.* v. *U. S.* (*supra*).

B. There Was A Rational Basis For The Conclusions Of The Commission.

In its decision the Court of Appeals quite aptly stated (p. 235) that the only question in the proceeding before

the Commission was which of two tariff bases of freight charges was legally applicable on the petitioner's shipments, namely, "the old exceptions tariff and rates or the new uniform classification ratings and new class rates". The Commission found that "the old exceptions tariff and rates" was the legally applicable basis, and its findings have been upheld by both lower courts. Yet, the petitioner continues to argue that "the new uniform classification ratings and new class rates" were legally applicable on the involved shipments, refusing to accept the findings of the Interstate Commerce Commission despite the fact that in instances of this kind such administrative findings are binding on the courts in the absence of proof of any error of law on the part of the Commission.

The proceeding before the Commission was a direct outgrowth of the reports of the Commission in *Class Rate Investigation, 1939**, and *Consolidated Freight Classification***, 262 I.C.C. 447; 264 I.C.C. 41; 268 I.C.C. 577; 281 I.C.C. 213; 281 I.C.C. 329; and 286 I.C.C. 171. The latter was a companion to the former proceeding.

In Docket No. 28300, the Commission prescribed a single scale of class rates for application throughout the United States east of the Rocky Mountains. In Docket No. 28310, the Commission required the respondent railroads to publish a single uniform freight classification to be applied in connection with the class rates prescribed in Docket No. 28300. However, it did not prescribe or pass upon the propriety of any particular item in that classification.

The tariffs which gave effect to the orders of the Commission in those proceedings were published effective May 30, 1952. They were the tariffs publishing "the new uniform classification ratings and new class rates" referred to by the Court of Appeals (p. 235). Uniform Freight

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* Sometimes referred to as Docket No. 28300.

** Sometimes referred to as Docket No. 28310.

Classification No. 1, published in compliance with the order of the Commission in Docket No. 28310, did not cancel the Illinois, Official, Southern and Western Classifications previously in effect. Neither did the various tariffs publishing the class rate scales prescribed by the Commission in Docket No. 28300 cancel a single one of the existing tariffs publishing the several previously prescribed class rate scales. On the contrary, the four classifications just referred to, together with the previously prescribed class rate scales applicable in connection with those classifications, continue to apply on export, import, coastwise and intercoastal traffic to this very day.

On and after May 30, 1952, the several previously prescribed class rate scales continued to apply in connection with ratings published and applicable prior to that date as "exceptions" to one or more of the four classifications referred to. Those "exception ratings", together with the previously prescribed class rates in connection with which they applied, were the "exception rates" which the Commission repeatedly stated were not within the scope of its investigations in Dockets Nos. 28300 and 28310. As a matter of fact, in *New York* v. *United States*, 331 U. S. 284, this court itself observed (p. 330) that the Commission was not dealing with exception and commodity rates in those proceedings. Those so-called "exception rates" or specific commodity rates applied to more than 95 percent of the total traffic handled by the respondent railroads throughout Docket No. 28300 territory, and were "the old exceptions tariffs and rates" referred to by the Court of Appeals (p. 235).

A rating, rate, rule or regulation published as an "exception" to a classification governing a tariff publishing class rates, or a so-called commodity rate, supersedes and takes precedence over any rating, rate, rule or regulation published in the governing classification itself.

In the *Report of the Commission on Reconsideration, supra*, the entire Commission concluded that exception

bases of rates were lawfully published and legally applicable on one of the two types of shipments with respect to which complaint had been made to the Commmission, and it is that determination by the Commission which is alleged to be "arbitrary, capricious, and without support of law or evidence". That allegation rests on the contention of the petitioner that the Court of Appeals, like the Commission, rested its conclusion on the provisions of Item 300-B, and that neither the Court nor the Commission gave any consideration to Item 5. The petitioner argues that by construing the word "rating" in Item 300-B to mean "ratings" both the Court and the Commission indulged in "unwarranted liberalization". The same contention was advanced and argued at considerable length in the lower Court proceedings, as it had been in the Commission proceeding. There is clearly no merit to that contention, as both the Commission and the lower courts found.

Each of the class rate tariffs publishing the single scale of class rates prescribed by the Commission in Docket No. 28300, for application in connection with the classification ratings published in the single uniform freight classification which the railroads were required to publish in compliance with an order of the Commission in Docket No. 28310, contained a provision identified as Item No. 300 or Item No. 300-B. That provision expressly made the Docket 28300-28310 bases of class rates and charges inapplicable in any case where a commodity rate, classification exception, or column "rating" was in effect.

A specific exception rating was published for application on each of the four commodities included in the particular type of mixed carload shipment with which this action is concerned. In addition, a rule* was published as a specific exception to the governing classification expressly providing that any or all of the articles referred

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* Item 110-G of Agent Hinsch's Tariff I.C.C. No. 4106.

to could be shipped in mixed carloads. Paragraph (a) of that rule provided in effect that charges on the articles included in the mixed carload would be assessed on the basis of their respective carload rates, subject to a carload minimum weight of 20,000 pounds. The respective carload rates were those determined by the specific exception ratings referred to.

Because Item No. 300 or Item No. 300-B speaks of a "rating" rather than "ratings", the petitioner argues that the Commission liberalized the term "rating". Obviously, there was a "rating" and, to the extent that there was a "rating", the rule in the Docket 28300 class rate tariffs made the Docket 28300-28310 bases of rates and charges inapplicable. Since there was a specific rating for each of the four articles included in each shipment of the particular type in question, Item No. 300 or Item No. 300-B in the class rate tariff made the Docket 28300-28310 bases of rates and charges inapplicable on each of the four articles. The rule applied to each "rating" individually and, incidentally and necessarily, to all four articles collectively.

The important fact is that the petitioner's argument deals only with the provisions of the tariffs publishing "the new uniform classification ratings and class rates" and completely disregards the provisions of other tariffs which published "the old exceptions rates". The latter tariffs published "exceptions" which were legally applicable on May 29, 1952. Those "exceptions" were not involved in Dockets 28300 and 28310, and continued to apply on and after May 30, 1952, when the tariffs publishing "the new uniform classification ratings and new class rates" became effective.

What the petitioner continues to overlook is that all of the tariffs publishing "the new uniform classification and new class rates", including "Item 5", applied and were intended to apply only on traffic which was within the scope of the Docket 28300 and 28310 proceedings.

It can hardly be contended seriously, logically, or reasonably, that in such an instance the Commission liberalized "the term 'rating' to mean 'rating' as said term is used in a tariff rule". The clear purpose, intent, and legal effect of Item No. 300 was to specifically preclude the application of the Docket 28300-28310 bases of rates and charges published effective May 30, 1952, on traffic which prior to that date had moved under previously published exception ratings or commodity rates which were not involved in the Docket 28300-28310 proceedings. The publication of the uniform classification basis, effective May 30, 1952, did not nullify the classification exceptions which were applicable on these or any other commodities for which exception ratings were in effect and applicable on May 29, 1952.

The meaning and intent of Item No. 300, as originally published and as later amended, had previously had the careful consideration of the entire Commission, as shown in the *Report of the Commission on Reconsideration, supra.* The same conclusion here was entirely consistent with that prior extensive consideration.

The *Report of the Commission on Reconsideration, supra,* indicates clearly that in disposing of the complaint before it the Commission gave consideration not only to Item 300-B but also to Item 5. In reaching its conclusions the Commission said:

> "It is a well-understood principle that in ascertaining the meaning of the language of a tariff, the object sought to be accomplished is to be considered, and if the language is fairly susceptible of reasonably plain meaning, that construction should be put thereon. *Peterson Biddick Co.* v. *Chicago, B. & Q. R. Co.,* 151 I.C.C. 376, 377. The defendants' objective in publishing item 300 was to remove any possible alternation of the uniform class rates where exceptions ratings were established, and the original phrasing of the provision makes that fact abundantly clear. The question then is, did the substitution of 'on a

given shipment' for 'on any article or commodity' so alter the meaning of the provision as to warrant a determination that the original objective also was intended to be changed. Bearing in mind the reason for the amendment of the language, we think that a fair and reasonable interpretation of the provision is that where an exceptions rating or ratings (in the case of mixed-carload quantities) were in effect 'on a given shipment', the uniform class rates could not be considered in determining the applicable charges."

In its opinion the District Court noted (p. 200) the fact that "the parties appear to agree that if there is a judicial review, it should be restricted to a determination of whether there was a 'rational' basis for the Commission's orders" which, said the Court, was just another way of saying that the orders must be supported by substantial evidence. The Court set forth the various "ratings" involved in the case, the rule (Item 300) adopted to preserve the exception ratings, together with the reasons therefor. Thereafter the Court quoted part of the quotation from the *Report of the Commission on Reconsideration* set forth above, and then said:

> "Without going into plaintiff's interpretation of the above section, this court cannot deny that there is a 'rational' basis for the Commission's conclusions. Their main consideration was the object sought to be accomplished and they applied a reasonable construction of the language to accomplish it. We cannot draw conjecture as to what our interpretation would have been had this case been presented here in the first instance. We are satisfied that the Commission's orders were the result of the consideration of all the evidence and applying an interpretation commensurate with that evidence." (p. 201)

In its opinion the Court of Appeals reviewed the matter in substantially the same manner, and, in affirming the judgment of the District Court, held that there was a rational basis for the conclusions of the Commission.

Even disregarding the fact that the findings of the Commission could not be assailed and had to be assumed to be supported by substantial evidence, it is nevertheless clear that (1) the Commission did consider all the evidence and in the exercise of its administrative expertise concluded that the assailed basis of rates and charges was applicable; (2) the findings and conclusions of the Commission were supported by substantial evidence; and (3) there was a rational basis for its findings and conclusions.

In *General Motors Corporation* v. *United States*, 149 F. Supp. 689, in addition to holding that court review of Commission orders "is limited to finding whether there was substantial evidence supporting any findings of fact made by the Commission and whether the conclusions of the Commission were in accordance with the standards set by Congress", citing *United States* v. *I.C.C.*, 337 U. S. 426, the court held, as a matter of law, that where "the issue is the proper interpretation of the tariffs of a common carrier, the court will give great weight to the interpretation of the Commission since such determinations have been placed by Congress within the Commission's field of special competence".

Here, as in *General Motors Corporation* v. *United States, supra*, the contention of the petitioner that there is no rational basis for the assailed orders is clearly without merit.

Conclusion

These respondents respectfully submit that there was a rational basis for the conclusions and findings of the Commission, as both lower courts held, and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Certificate of Service

I, J. EDGAR MCDONALD, attorney of record, for the railroad respondents in this proceeding, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have today served copies of this brief on the several parties to this action as follows:

1. On the petitioner, General Motors Corporation, by mailing copies thereof in duly addressed envelopes, with air mail postage prepaid, to its attorneys of record, Aloysius F. Power, 3044 West Grand Boulevard, Detroit 2, Michigan, Walter R. Frizzell, 3044 West Grand Boulevard, Detroit 2, Michigan, and E. J. McGratty, Jr., 3044 West Grand Boulevard, Detroit 2, Michigan.

2. On the Interstate Commerce Commission, by mailing copies thereof in duly addressed envelopes, with first class postage prepaid, to its attorneys of record, Robert W. Ginnane, General Counsel, and Arthur J. Cerra, Assistant General Counsel, Washington 25, D. C.

3. On the United States of America, by mailing copies thereof in duly addressed envelopes, with first class postage prepaid, to its attorneys of record, William H. Orrick, Jr., Assistant Attorney General, Lawrence Gubow, United States Attorney, Morton Hollander, Attorney, and David L. Rose, Attorney, Department of Justice, Washington 25, D. C.

This 21st day of June, 1962.

J. EDGAR MCDONALD,
466 Lexington Avenue,
New York 17, N. Y.